

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

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DEBRA P. HACKETT, CLK  
U.S. DISTRICT COURT  
MIDDLE DISTRICT ALA

ALLSTATE PROPERTY AND  
CASUALTY COMPANY,

Plaintiff,

vs.

MICHAEL WILKS;

Defendant.

CIVIL ACTION NUMBER: 2:20-cv-00496

**COMPLAINT FOR DECLARATORY JUDGMENT**

Allstate Property and Casualty Company (“Allstate”) files this action pursuant to 28 U.S.C. § 2201 and 28 U.S.C. § 1332 seeking a declaratory judgment that Michel Wilks (“Wilks”) is not entitled to uninsured motorist benefits under an auto policy issued to his great aunt Anne Slaughter. Wilks was not operating a vehicle insured under the policy in the accident, and he was not a resident of Slaughter’s household.

1. Allstate is a corporation incorporated in the State of Illinois with its principal place of business in Illinois, and it is a citizen of Illinois.
2. Wilks is an adult citizen of the state of Alabama.
3. The Court has jurisdiction pursuant 28 U.S.C. §§1332 and 2201 to render a declaratory judgment establishing the parties’ rights under the contract of

insurance. The amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and complete diversity of citizenship exists.

4. On Saturday, September 29, 2018, Wilks and Angela Marie Hammonds were riding motorcycles on I-85 in Macon County. They had swapped motorcycles, that is: Wilks was riding a 2016 Ducu owned by Angela Marie's husband, Jeffrey Hammonds, while Ann Marie was riding Wilk's 2007 Honda. Both cycles are insured by GEICO. The accident occurred when Ann Marie swerved into Wilk's lane clipping the cycle he was riding and resulting in his injuries. Wilks made an uninsured motorist claim under his great aunt's policy with Allstate.

5. Wilks's great aunt is Ann Slaughter ("Slaughter"). Allstate issued a personal auto policy to Slaughter, policy number [REDACTED] 110. Slaughter and Wilks do not reside together. Slaughter lives at [REDACTED], Phenix City, Al. 36867, while Wilks resides at 306 James Street, Tallassee, Al. 36078. A certified copy of the Allstate policy issued to Slaughter at her address is attached as Exhibit A.

6. The uninsured motorist coverage applies to "damages an **insured person** is legally entitled to recover from the owner or operator of an uninsured motor vehicle." (ALABAMA UNINSURED AMENDATORY ENDORSEMENT ARC 20, **General Statement of Coverage**).

7. The policy defines “insured person” for uninsured motorist coverage as:

- 2 **Insured Person(s)** means:
- a) **you** and any **resident** relative.
  - b) any person while in, on, getting into or out of, or getting on or off of, an **insured auto** with **your** permission.
  - c) any other person who is legally entitled to recover because of **bodily injury to you, a resident** relative, or an occupant of **your insured auto** with **your** permission.

The policy defines “resident” as:

8. **“Resident” means a person who physically resides in your household with the intention to continue residence there. We must be notified whenever an operator becomes a resident of your household. Your unmarried dependent children while temporarily away from home will be considered residents if they intend to resume residing in your household.**

Wilkes did not reside in Slaughter’s household, so he is not an “insured person” under definition 2(a).

8. Wilks is not an “insured person” under definition 2(b), because he was not occupying an “insured auto” in the collision. The uninsured motorist coverage defines “insured auto” as:

**Additional Definitions For Uninsured Motorists Insurance**

1. **Insured Auto** means an **auto you own** which is described on the Policy Declarations and for which a premium is shown for **Uninsured Motorists Insurance**. This also includes:
- a) its **replacement auto**;
  - b) an **additional auto**;
  - c) a **substitute auto**; or
  - d) a **non-owned auto**.

9. Hammond’s motorcycle was not listed on Slaughter’s policy as a covered auto. Rather, her policy described only two automobiles, not a

motorcycle:

<b>Vehicles covered</b>	<b>Identification Number (VIN)</b>
2013 Cadillac Cts	1G6DE5E53D0121747
2018 Kia Sorento	5XYPG4A33JG395426

Therefore, the motorcycle was not an “insured auto” under paragraph 1 for autos “described on the policy.”

10. The motorcycle was not a “non-owned auto,” as defined in the policy:

6. “Non-owned Auto” means an auto used by you or a resident relative with the owner’s permission but which is not:
- owned by you or a resident relative, or
  - available or furnished for the regular use of you or a resident relative.

Coverage for operating a “non-owned auto” with permission is limited to “you” (defined as the named insured), or a “resident” relative. Wilks does not constitute either such person. He is not “you,” the named insured, and he is not a “resident” relative.

11. So, Wilks is not an “insured person,” nor was riding an “insured auto.” Therefore, he is not entitled to uninsured motorist protection.

12. The policy does list Wilks as a “listed driver”:

**Listed drivers on your policy\***

Ann Slaughter - Widow female driver, age 81, Safe Driving Club  
Angela Wilks - Married female driver, age 31, Safe Driving Club

(continued)

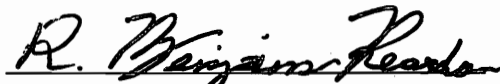
**Listed drivers on your policy\* (continued)**

Michael Wilks - Married male driver, age 31, Safe Driving Club

A “listed driver” is one who is covered by the policy, while driving an “insured auto” listed on the policy. The “listed driver” is not a named insured and is not an omnibus insured, such as a “resident” relative under Allstate’s policy. The policy does not insure a listed driver for driving any vehicle, anytime, anywhere, such as driving motorcycles on a Saturday afternoon. Therefore, that Wilks was a “listed driver,” does not make him eligible for uninsured motorist benefits under Slaughter’s policy.

WHEREFORE, Allstate prays that the Court declare:

1. Wilks is not entitled to receive uninsured motorist benefits under Slaughter’s policy.



J. Mark Hart (asb-5059-a61j)

R. Benjamin Reardon (asb-1469-j29e)

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